



In the Supreme Court of the United States

OCTOBER TERM 1976

No. 76-956

MISSISSIPPI GAY ALLIANCE AND ANNE DEBARY,
Petitioners,

vs.

BILL GOUDELOCK, et al.,
Respondents

**BRIEF OF RESPONDENT BILL GOUDELOCK
IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**

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OPINIONS BELOW

The Petitioners accurately set out the opinions of the United States District Court and the United States Court of Appeals for the Fifth Circuit.

JURISDICTION

On August 12, 1976, the United States Court of Appeals for the Fifth Circuit entered its judgment. A rehearing or in the alternative a rehearing en banc was denied on October 13, 1976. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

I

Is there a connection between the administration at Mississippi State University and "The Reflector," the student owned and operated newspaper at Mississippi State University, to establish state action in this cause?

II

Does the First Amendment clause of freedom of the press allow a college administration to interfere in the publication of a newspaper owned and operated by the students?

CONSTITUTIONAL PROVISIONS INVOLVED

This cause involves the freedom of the press clause of the First Amendment to the Constitution.

STATEMENT OF THE CASE

The facts of this case present a clearly defined issue which the facts will disclose. It is distinguishable from previous cases which have been presented to this Court for its review. The issue presented is whether or not the editor, elected by the student body, of a campus newspaper may exercise his editorial judgment and refuse to publish an advertisement or whether or not he is required to publish all advertisements submitted for publication to the newspaper. Additionally, the Petitioners request the highly unusual affirmative relief requiring that the Administration of the University, by injunctive process, to interfere with the operation of a campus newspaper which is solely a student activity.

On August 16, 1973, Mississippi Gay Alliance presented a

proposed advertisement to Bill Goudelock, the duly qualified, elected and acting Editor of "The Reflector," the student newspaper at Mississippi State University. Mr. Goudelock refused the advertisement. The Mississippi Gay Alliance filed its action against Goudelock requesting the declaratory and injunctive relief that the advertisement be published. The United States District Court for the Northern District of Mississippi, Eastern Division, finding no state action, dismissed the cause. Mississippi Gay Alliance v. Goudelock, EC-73-95K (January 30, 1974).

Subsequent to the filing of the original cause, an identical cause was filed by Mississippi Gay Alliance including, in addition to Bill Goudelock, Dr. William L. Giles, President of Mississippi State University, Henry F. Meyers and Sam Dudley, faculty members of the Department of Communications at Mississippi State University. This was a blatant and apparent attempt by Mississippi Gay Alliance to alledge in its Complaint state action. In the second case that was filed, no state action is stated.

The record indicates that the hearing was rescheduled for October 25, 1974, wherein certain facts were stipulated. On December 2, 1974, the United States District Court for the Northern District of Mississippi modified the stipulations reflecting that students at Mississippi State University were members of the Mississippi Gay Alliance.

In its ruling, the District Court held upon the stipulations and the facts contained in the Complaint as follows:

"[O]n the stipulated facts before the Court, and treating the complaint as admitted throughout, there is no action shown on the part of Giles, Meyers or Dudley, University officials, which brought about the circumstances of which the plaintiffs complain. The only allegation against these officials is that they

tacitly went along with the decision of the campus newspaper editor. There is no allegation or proof that they directed Goudelock not to run the advertisement, or that they censored him in any way, or that they undertook to control or sought to control his judgment in any manner whatsoever. Thus there was an utter lack of control or direction alleged or shown on the part of these three University officials. Their inaction can in no way be subject to the Fourteenth Amendment principles.

"Moreover, the undisputed facts are that 'The Reflector' is a campus newspaper and not an official university news organization as such; and it is operated by a student editor selected by vote of the student body. This Court is thus unable to see any connection between the operation of this newspaper, which is a student activity, and the State of Mississippi or any organ or agency of the state. The newspaper is simply a student activity conducted on the campus of a state university, and does not constitute state action in any accepted sense of the term." Ruling of the Court, R-26, pp. 7-8.

The Court of Appeals affirmed the District Court relying upon this Court's opinion in Miami Herald Publishing Company v. Tornillo, 418 U.S. 241, 94 S.Ct. 2831, 41 L.Ed.2d 730 (1974), stated, 536 F.2d. 1073, 1075:

"Since there is not the slightest whisper that the University authorities had anything to do with the rejection of this material offered by this off-campus cell of homosexuals, since such officials could not lawfully have done so, and since the record really suggests nothing but discretion exercised by an editor chosen by the student body, we think the First

Amendment interdicts judicial interference with the editorial decision."

On the above stated facts, this petition is laid.

ARGUMENT

I

No State Action Can Be Proven in This Case Since the University Defendants, Giles, Meyers and Dudley, Did Not Exercise Any Control Whatever Over the Operations of the Campus Newspaper at Mississippi State University

There are no facts in this record which even tend to prove the allegations against the University administration as alleged in the Complaint. The Petitioners attempted to connect "The Reflector," the University administration, and the operation of the student newspaper to constitute state action. This was, however, not sufficiently done.

"No presumptions flow from mere allegations; no one can be required, consistent with due process, to prove the absence of violation of law." Norwood v. Harrison, 413 U.S. 455, 471, 93 S.Ct. 2804, 37 L.Ed.2d. 723, 735 (1973).

It must be shown by the Mississippi Gay Alliance that the State or someone acting for and on behalf of the State acted to deny the rights as alleged. The Court of Appeals in its opinion stated:

". . . [T]he District Court found, on the complaint and

the stipulated facts, that there was no indication that any University official or faculty member had anything to do with the rejection of the advertisement or the announcement; that there was a complete lack of control over the student newspaper on the part of University officials.

The Court concluded that the rejection of the advertisement 'does not constitute state action in any sense of the term.' " 536 F.2d. 1073, 1074-1075.

And the Court of Appeals also concluded,

"While it is true that the student newspaper is supported, in part by activity fees collected by the University, the students elect the editor. The complaint did not allege and the stipulations did not assert that University officials supervise or control what is to be published or not published in the newspaper." 536 F.2d. 1073, 1075.

"The Reflector" is operated by the Editor who is its chief executive officer elected by a Student Body election. It is not an official publication of Mississippi State University. No monies of the State are used in its publication. In fact, its entire operation is financed by student fees. There has been no evidence whatsoever that the defendants, Giles, Meyers and Dudley, participated in the decision not to publish the advertisement. In fact, the record shows the defendants who are connected with the University Administration have no control whatsoever over the newspaper.

The Record indicates that the Ruling of the District Court on October 25, 1974, the District Court found that:

"... The plaintiffs rely on the proposition that when

Giles, Meyers and Dudley did become aware of the refusal of Goudelock to run the ad, they acquiesced and tacitly consented to his personal decision."

And,

"First, on the stipulated facts before the Court, and treating the complaint as admitted throughout, there is no action shown on the part of Giles, Meyers or Dudley, University officials, which brought about the circumstances of which the plaintiffs complain.

The only allegation against these officials is that they tacitly went along with the decision of the campus newspaper editor. There is no allegation or proof that they directed Goudelock not to run the advertisement, or that they censored him in any way, or that they undertook to control or sought to control his judgment in any manner whatsoever. Thus there was an utter lack of control or direction alleged or shown on the part of these three University officials. Their inaction can in no way be subject to Fourteenth Amendment principles." Ruling of the Court, R-26, pp. 3, 7-8.

II

The Fundamental First Admendment Right of the Press Prohibits University Interference With the Publication of a Campus Newspaper

In this Court's opinion in the Tinker v. Des Moines Independent School Dist., 393 U.S. 503, 506, 89 S.Ct. 733, 21 L.Ed.2d. 731, 737 (1969), this Court stated:

"It can hardly be argued that either students or teachers shed their Constitutional rights of freedom of

speech or expression at the schoolhouse gates."

The University Officials at Mississippi State University never waived from this edict.

There is no evidence in this record that the University Officials at Mississippi State University interfered in any manner whatsoever with the judgment of the Editor, Goudelock, in his decision to reject the advertisement. There is no evidence in this record whether the University Officials either agreed or disagreed with the decision of Goudelock. In fact this Court has stated that a University acting by and through its duly appointed or acting officials "as an instrumentality of the State may not restrict speech . . . simply because it finds the views expressed by any group to be abhorrent." Healy v. James, 408 U.S. 169, 180, 187, 92, S.Ct. 2338, 33 L.Ed.2d. 266, 278-279, 283 (1972).

The reverse is true in Bazaar v. Fortune, 476 F.2d. 570, aff'd en banc 489 F.2d. 225 (5 Cir. 1973), cert. den. 416 U.S. 995, 94 S.Ct. 2409, 40 L.Ed.2d. 774 (1974). In this case the United States Court of Appeals for the Fifth Circuit held that the Chancellor, who is the President of the University of Mississippi, could not prevent the distribution of an on-campus publication of the English Department.

It is well settled law that the State and all agencies of the State are prohibited from interfering with a student activity. It has been found in this case that the campus newspaper, by nature private, 536 F.2d. 1073, 1074-1075, may be told that it cannot refuse an advertisement. This reasoning is carried to its logical conclusion and the opinion of this Court in Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241, 258, 94 S.Ct. 2831, 41 L.Ed.2d. 730, 741 (1974) when it said:

"A newspaper is more than a passive receptacle or conduit for news, comment and advertising. The

choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials -- whether fair or unfair -- constitutes the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time."

CONCLUSION

The Petitioners simply have not proven state action. It is abundantly clear that the First Amendment rights, the freedom of the press, would prohibit a University Official, in this case Giles, Meyers and Dudley, from interfering in any manner whatsoever in the operations of an independent student newspaper. The Petition for Certiorari should be denied.

Respectfully submitted,

Travis H. Clark, Jr.

CERTIFICATE

I, Travis H. Clark, Jr. do hereby certify that I have caused to be mailed this day by United States Postal Service a true copy of the foregoing Brief of Respondent, Bill Godelock in Opposition to Petition for Writ of Certiorari to:

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THIS, the 8th day of April, 1977

TRAVIS H. CLARK, JR.